

New Information about the TEACH Act

October 7, 2002

By Ken Salomon

Here's more detailed information:

After a convoluted and time consuming route, the Technology, Education and Copyright Harmonization Act, better known as the TEACH Act, is finally headed to the President's desk for signature. Having passed the Senate last year as a freestanding bill, and been reported in the exact same form without amendments by the House Judiciary Committee earlier this year, the TEACH Act became bogged down in the House. However, with encouragement and pressure from education and library associations in Washington, leaders of the House and Senate Judiciary Committees were determined to see that the bill passed Congress this year. To make that happen, they incorporated the TEACH Act in Division C, Title III, Subtitle C, Section 13301 of the conference report on the 21st Century Department of Justice Appropriations Authorization Act HR 2215). The House adopted the conference report on September 26 and the Senate followed suit on October 3. The President is expected to sign H.R. 2215 soon and the TEACH Act will go into effect immediately upon enactment.

The TEACH Act amends Sections 110(2) and 112 of the Copyright Act of 1976 to give instructors at accredited nonprofit educational institutions and governmental bodies greater flexibility and certainty in the use of third party copyrighted works in online course delivery.

In summary, the TEACH Act permits the display and performance of virtually all types of works during online instruction without the consent of the copyright owner, provided that the online instruction at an eligible institution is mediated by an instructor, the transmission of the material is intended "solely" for receipt by "students officially enrolled in the course for which the transmission is made," regardless of where the students are physically located, technical measures are employed by the institution to prevent "retention of the work in accessible form by recipients of the transmission. . . for longer than the class session," and "to the extent technologically feasible," the institution employs technological measures that limit the transmission of the material to students enrolled in the particular course and that preclude unauthorized student retention and/or downstream redistribution.

This overall grant of authority is not broad enough to replace textbooks, nor does it apply to materials that are produced by the copyright owner for online instructional sales, but it does give institutions limited rights to retain the information and provide limited student access for review purposes. Finally, the TEACH Act also grants a limited right to digitize portions of an analog work for use in an online course if a digital version is not available in the marketplace.

There is a price. Institutions desiring to take advantage of the TEACH Act must have copyright policies in place and must provide "faculty, students, and relevant staff members" with information that "accurately describe, and promote compliance with, the laws of United States relating to copyright." In addition, the institution must provide students with a "notice to students that materials used in connection with the course may be subject to copyright protection."

An excellent and far more comprehensive summary of the TEACH Act was prepared by Ken Crews for the American Library Association at <http://www.ala.org/washoff/teach.html>.

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-----Original Message-----

From: Russell Poulin [<mailto:RPoulin@wiche.edu>]

Sent: Sunday, October 06, 2002 11:33 PM

To: wcetall-l@hawaii.edu

Subject: FW: TEACH ACT passed-repost!

Hello WCET Members -

Thank you to Janis Bruwelheide for passing this news about the TEACH Act along. Perhaps Janis or others who know more about the practical consequences of the passage of this act will be kind enough to post their opinions to everyone else on the list.

Thank you.

Russ

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303-541-0305

-----Original Message-----

From: Janis Bruwelheide [<mailto:janisb@montana.edu>]

Sent: Sun 10/6/2002 11:26 AM

To: Russell Poulin

Cc:

Subject: TEACH ACT passed-repost!

Russ, good news about the TEACH Act! It passed! ok to repost from ALAWON:

ALAWON: American Library Association Washington Office Newsline

Volume 11, Number 82

October 4, 2002

Good News! Congress Passes the Technology Education and Copyright Harmonization Act (TEACH)

Critical distance education legislation, the TEACH Act, has now passed both houses of Congress as an amendment to the Justice Department reauthorization bill (H.R. 5512). According to Senator Leahy the language of this legislation is identical to that of the Hatch-Leahy TEACH Act that the Senate passed in June 2001 (CR S9889). ALA has long supported this version. The President is expected to sign H.R. 5512 soon and the TEACH Act will go into effect immediately.

The TEACH Act expands face-to-face teaching exemptions in the copyright law, allowing teachers and faculty to use copyrighted works in the "digital classroom" without prior permission from the copyright holder. The law is complex and details numerous responsibilities that must be met before educational institutions (including their libraries) can benefit from the exemptions.

Watch the Washington Office Web site and ALAWON for more information. Reminder: Please ask Congressional representatives to co-sponsor fair use legislation H.R. 5544

Ask your Congressional representatives to co-sponsor the "Digital Media Consumers' Rights Act" (DMCRA) introduced by Reps. Rick Boucher (D-Va) and John Doolittle (R-Ca) on October 3rd. The bill number, which was not published until late yesterday, is H.R. 5544.

See yesterday's ALAWON for more information about this groundbreaking legislation that will restore fair use. DMCRA is the first legislation since 1998 to address the rights and needs of library users, researchers, and consumers who wish to use digital works or study digital technologies.

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